Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	MM Docket No. 00-10
	)	MM Docket No. 99-292
Establishment of a Class A	)	RM-9260
Television Service	)	

COMMENTS OF TV-61 SAN DIEGO, Inc.

To: The Commission

February 17, 2000

I. Introduction

1. TV-61 San Diego, Inc. is the Licensee of a Low Power Television Station located in San Diego, CA. TV-61 San Diego, Inc. began applying for LPTV in 1985 and has been active in the industry since our application was approved into a Cosntruction Permit. As TV-61 San Diego, Inc. will provide the type of programming contemplated for protection by the Community Broadcasters Protection Act of 1999 ("CBPA"), TV-61 San Diego, Inc. is vitally interested in the manor in which the Commission implements the CBPA and regulates the new Class A television service.

II. Specific Comments and Proposals

2. NPRM Paragraph 9: The concept of a Class A television service from its earliest inception (in comments to the HDTV NPRM) was the creation of a new class of television service, not the one time re-classification of a fixed number of "lucky" stations to be singled out from other LPTV stations, present and future, for special treatment. The name "Class A" was borrowed from the FM radio service, because the intent was to have different size classes of full power television stations, just like we now have different size classes of FM radio stations. Much as FM Radio applicants can now choose whether to apply for class A, B, or C, FM authorizations, television applicants would be able to choose whether to apply for Class A or Class C (the existing 5.0 megawatt) station, depending on the size of the community to be served and spectrum availability. The FM radio services were allowed to grow over a period of decades, and not limited to a one-time eligibility window. It would be unfair to hobble the new Class A television service with a one-time eligibility requirement that precludes future growth. This is particularly true in our case as we were int he Cosntruction Permit stage when the 90-day deadline was determined.

3. The LPTV industry pursued Commission adoption of rules to create this Class A service for several years, but was unable to convince a majority of the Commissioners to act accordingly. The time periods included in the CBPA were included to insure that the Commission implemented the new primary status protections promptly. Those time periods were not included for the purpose of mandating a quick end to eligibility for these new protections. The LPTV industry made Congress aware that delay in the start of primary protection would continue the ongoing loss of LPTV channels in the large, spectrally crowded television markets. The amount of time it took to get existing licensees under Class A protection was "of the essence". The need, after this quick implementation, is ongoing. Future generations of community broadcasters building new LPTV stations will need primary status just as badly as the original pioneers do. To interpret the CBPA as prohibiting Commission inclusion of these later arrivals would be irrational. Nothing in legislative history provides any basis for such a niggardly result. Moreover, there might be a day when certain licensees remit their licenses to the Commission in exchange for other spectrum and when 85% of the country's households have HDTV capable sets. Would not some of those frequencies become available to LPTV operators who would qualify for Class A status?

4. The thousands of television translators (as well as many LPTV stations) historically provided a critical communication service to rural America, i.e. the delivery of network television to low population density areas that could not support full power stations on their own. With the growth of Direct-to-Home satellite services ("DTH") and the recent authorization of satellite delivery of the television networks this core function is increasingly being served by DTH. With the help of the reduction in program production costs, because of continued technological innovation, these rural translators and LPTV's can shift their focus to locally produced, locally transmitted television programming. It would be most unfortunate for the Commission to preclude an application for Class A protections by one of these rural broadcasters that has subsequently begins to provide the types of services CBPA was designed to protect and nurture. The Commission should allow translators and LPTV stations that convert to a local community broadcast programming format to apply for Class A protections once they meet the criteria in the CBPA.

5. NPRM Paragraph 10: Radio wave propagation functions exactly the same for low power television stations as for full power television stations, the ethers apparently not adjusting for the many handicaps imposed on LPTV since its creation. As a result of this physical neutrality; this electromagnetic level playing field; LPTV stations deliver as much service in both their 64dBu and 74dBu contours as do full power stations. It would be extremely harmful, unfortunate and wasteful of spectrum for the Commission to perpetuate any of the handicaps imposed on Part 74, LPTV stations when it adopts signal contour protection criteria for the new Class A LPTV service. The objective that the Community Broadcasters Association ("CBA") sought through the CBPA was the same primary status that full power television stations enjoy under Part 73 of the rules. The

intention of the U.S. Congress when it adopted the CBPA was nothing less than to grant the CBA it's legislative objective. To now deny class A LPTV stations the protection of their grade B contours would be to deny LPTV licensees the benefits Congress sought to insure by adoption of the CBPA.

6 Protecting the grade B contour of Class A LPTV stations, as defined in Part 73 of the Rules is in the public interest. For the millions of viewers of LPTV stations the fact that **Part 74 or secondary** LPTV stations did not have regulatory protection of their grade B contours had nothing to do with the service being provided by every LPTV station in the area between their grade A and grade B contours. To citizens living in that grade B service area programming from an LPTV station was exactly like the service of any other off-the-air television station. For these citizens the plain meaning of "service" in the CBPA includes their grade B delivered LPTV service. There is nothing in the CBPA to contradict the plain meeting of the word service. The description of a television station's "service" area has always, in every context, included the grade B service area. The fact that the Commission historically did not protect the grade B contours of Part 74 LPTV stations does not mean the services provided by this extended service area did not exist. That Grade B service deserves to be protected upon conversion to Class A every bit as much as an LPTV station's Grade A service.

7. Upon conversion to DTV the signal of LPTV stations will again enjoy a level playing field in the world of physics. If full power stations provide service out to their 41dbu contour (for UHF) a digital LPTV will provide the same level of service out to their 41dbu contour. It would be something close to irrational to arbitrarily to pick some higher field strength value for the protected digital contour of a class A LPTV.

8. NPRM Paragraph 13: TV-61 San Diego, Inc. agrees with the Commission tentative conclusion that "television" applications that had not reached grant status (i.e., that had not become construction permits) as of November 29, 1999 must protect the service area of LPTV authorizations that have filed timely certificates of Class A eligibility. TV-61 San Diego, Inc. recognizes that this may require some pending applications to be amended and even in a few cases returned as fatally defective. Nevertheless, the Commission has always found it in the public interest to protect existing licensees and construction permits from mere applicants. The Commission should protect the existing service of LPTV stations from mere NTSC-, DTV-, LPTV-, and TV-translator applications in the instance as well.

9. In its 6th Report and Order in MM Docket No.87-268 and the reconsideration thereof the Commission stated that petitioners seeking changes in the DTV Table of Allotments should coordinate their proposals with all licensees affected or in the affected market. This coordination requirement was clearly intended to include

coordinate with LPTV stations. Nevertheless the Commission has received and processed to grant several DTV channel changes that contained no study of or attempt to avoid interference to same area LPTV stations. The full power industry just continued to ignore the effect of DTV channel selection on existing LPTV service, notwithstanding the Commission's admonishment that such inclusiveness be part of changes to the DTV Allotment table. Notwithstanding the exceptions to the CBPA's protection requirements, changes to the DTV allotment table requested because a VHF analog licensee prefers a VHF digital allotment or UHF digital allottees prefer an allotment that they could move to a higher population location within the same DMA are not "technical problems" that **necessitate adjustment of the stations allotted engineering perimeters**. These types of changes are economically motivated adjustments requested for marketing purposes. The Commission should require such allotment changes to protect all LPTV stations, i.e. not just those that filed timely requests for class A certification, but all LPTV authorizations (as promised in the DTV 6th Report and Order).

10. NPRM paragraph 14: LPTV stations that are awarded primary status because of the CBPA should have their service contours protected in the manner that primary status station are protected. That protection methodology is spelled out in Part 73 of the Commission's rules (not in Part 74, as the NPRM suggests). It would be manifestly unfair to LPTV licensees that undertake all of the responsibilities and burdens of Part 73 of the rules to get the lessor protections specified in Part 74. The intent of the CBPA was to protect eligible LPTV stations by granting them primary status. It would contravene the purpose and intent and the CBPA to penalize the LPTV industry for winning their legislative battle by reducing their contour protection from that always given primary television stations to only that given secondary (i.e., Part 74) stations.

11. There are two minor exceptions to this Part 73 level of protection for Class A LPTV stations that would be consistent with the CBPA. First, Part 73 stations all have at a minimum "frequency offset" stability to their transmitters. (And in fact, many Part 73 stations employee precise frequency offset.) In Part 74, licensees were allowed to elect either frequency offset or no frequency offset transmitter stability. Those electing no frequency offset were given a higher (45dB) co-channel D/U protection ratio, while Part 73 licensees and Part 74 licensees electing frequency offset stability were given a lower (28dB) co-channel D/U protection ratio. Protecting these less frequency stable transmitters results in a horrible waste of spectrum that should not be perpetuated during the Class A conversion process. The Commission should protect Class stations (and all other LPTV and TV translator stations) as if they were frequency offset. Stations seeking Class A status should be required to upgrade their transmitter stability to frequency offset, as required by Part 73 of the Rules. In fact, given the extreme difficulty all LPTV licensees are facing finding channels for DTV displacement applications, the Commission should take this opportunity to reduce the level of protection given all LPTV and translator licensees to the D/U ratio given frequency offset authorizations. If a non-frequency offset licensee suffers or causes interference as a result, it should be

required add frequency offset, or allowed to elect to accept that additional interference received.

12. In the full power television service, co-channel stations spaced at the minimum separation distance experience a significant reduction of their grade B contour in the direction of the minimum spaced co-channel station. In other words, the distances established for the full power Table of Allotments resulted in an interference limited television service. In numerous situations LPTV stations have squeezed into markets which were frequency congested by an election to accept interference from previously authorized television stations. Examples, of these types of "interference limited" LPTV authorizations are when an applicant selected a channel with a +14, +15, or -7 channel relationship to a licensee in the same market. Furthermore, the grade B contours of many LPTV stations are interference limited because of closes by co- and adjacent channel stations, just like Class C television stations in the table of allotments. As with other Part 73 licensees, new Class A LPTV stations that were interference limited should be protected only to the extent that their existing authorization was interference free, and no more. This limitation on the protections awarded upon conversion to Class A is consistent with the CBPA's stated intentions to protect existing services.

13. The Commission wisely concluded in the 6th Report and Order that the creation of a de-minimous amount of interference to existing Part 73 authorizations should not block the creation of the large amount of new service that results from a new allotment. Accordingly, the Commission ruled that proposals for new allotments that caused a di-minimous amount of interference, defined as less than 10% of the preexisting service areas, would be granted. The same public interest calculus dictates that Part 73 or Part 74 applications that cause di-minimous interference to Class A protected service contours should be granted. Allowing such di-minimous interference is not inconsistent with the CBPA's mandate, since the CBPA envisioned protected LPTV stations to be treated like the existing Part 73 licensees. Under this interpretation of the protection mandated by the CBPA, the applications meeting the existing Part 73 protection criteria would be presumed to be acceptable for filing, but the presumption against non compliant applications could be rebutted by a technical showing that the interference predicted would be less than 10% of the affected station's combined Grade A and B service area.

14. In summary, Class A LPTV stations, both those certifying eligibility before January 28, 2000 and stations added to the Class A service after that date, should be regulated in Part 73 of the rules. Class A television stations should receive exactly the same degree and manner of protection given other Part 73 television stations. Now that these stations are to be licensed on a primary basis, and required to meet the obligations of a primary spectrum licensee, they should be protected as carefully as other Part 73 television stations. To create different tiers of protections would be unnecessarily confusing, unfair, and violative of the CBPA.

15. NPRM paragraph 18. Many LPTV applicants resorted to directional antenna configurations in order to achieve the maximum service area within the limited spectrum left for them to occupy. Much like the AM radio service, LPTV spectrum was authorized on a "demand" basis rather than with fixed separation distances. Omni-directional antennas are the exception, rather than the rule, in the LPTV service. As a result, LPTV service areas are rarely coextensive with the geographic boundaries of any particular city or "community of license". In fact, in the case of larger DMA's it was technically impossible for the LPTV station's service area to cover the entire market, because of the 1.0 kW transmitter power limit previously imposed in Part 74 (10W for VHF). Given the pattern of irregular service areas that has resulted from these technical constraints on the LPTV industry, the only reasonable definition of "market area" is each stations' predicted Grade B service area. This is the area in which service is actually provided so this is the only definition consistent with reality.

16. One of the most important public services provided by LPTV stations to their audiences is their broadcast of advertisements by locally oriented businesses. LPTV stations typically have advertising rate cards similar to small AM or Class A, FM radio stations, because of their similarly small service areas. This provision of low cost, advertising outlets permitted small, locally oriented businesses to advertise on "television" for the first time. For example, a local pizza shop in a top twenty television market would not advertise on a full power television station, because 90% of that station's audience was to far away from that pizza shop to have any interest in a purchase there. A local LPTV station provides a vehicle for this small business to advertise to a smaller area consistent with their realistic marketing reach. These local television advertisements are an important service to the viewing audience, because they provide needed information. When calculating a station's level of locally produced "programming" the Commission should count the time spent by an LPTV station broadcasting local advertisements. Advertising, while perhaps not always entertaining, is nevertheless an extremely important part of the service provided by television.

17. NPRM paragraph 21: The Commission is creating a new class of primary television stations. It would be unfortunate and short sighted to permanently limit eligibility in this Class A service to the 1,000 or 1,500 LPTV stations that initially qualify. While initial qualification is a useful criteria for sorting out interference conflicts between existing LPTV stations and new or pending applications, once the Class A television service is in place new comers should have unrestricted entry into the service, provided they meet the requirements of Part 73. First and foremost, if a station had not yet received its license when the ninety day pre-enactment period began, the impossibility that it have been programming for ninety days should not forever disqualify it from applying for Class A status. Second, if a station happened to have been licensed on a channel outside of the core band (i.e., channels 2-51) it would be grossly inequitable to forever preclude it from Class A eligibility. Third, it would be counterproductive to create a new Class A service that was destined to wither and die as its licensees died off, by not enabling future, new

LPTV stations to elect Class A status as they are authorized. Class A LPTV stations have demonstrated that they do good things for the public. It is in the public interest that there be more of them in the future. Let this new service grow. Fourth, when a licensee is transferred to a new controlling interest or a license is assigned to a new entity that "new" licensee should have a chance to elect Class A status. Fifth, if a television translator converts to LPTV status that "new" licensee should have a chance to elect Class A status. Lastly, when a previously existing licensee completes a major technical modification and initiates programming consistent with the requirements of the CBPA, that "new" facility should have an opportunity to apply for Class A protection. In any one of these circumstances it would be both equitable to the new licensee and consistent with the goals of creation of the Class A service to allow such "new" licensees to become Class A members. In each case beginning ninety days after the station begins compliance with the local origination requirement in the CBPA and conformity to all of the applicable Part 73 rules such licensees should be allowed to apply for Class A certification.

18. There also exist certain classes of stations that should be eligible for Class A protection even if they do not meet all of the criteria specified in the CBPA. In particular, stations that program greater than fifty percent in a foreign language typically provide the only or one of a very small number of television services to their principle audience. These foreign language programmers should be eligible for Class A status without regard to the amount of local programming they originate provided they operate 18 hours per day, and meet the applicable Part 73 rules. Similarly, LPTV stations serving such small communities that they now qualify for must carry status should receive Class A protection without any local origination requirement. Given the size of the market these stations serve, the origination service they now provide is typically a unique, critically needed service which should be protected with Class A status regardless of how little local programming the licensee produces.

19. NPRM paragraph 22. TV-61 San Diego, Inc. agrees with the Commissions conclusion that ownership interests as of November 29, 1999 should not restrict eligibility for Class A status. Cross ownership and multiple ownership rule should be applied prospectively. Pre-existing licenses should be grandfathered. The Commission should, however, encourage divestiture of Class A LPTV stations that violate cross ownership restrictions newly made applicable by granting tax certificates for station purchases that further cross ownership rules designed to encourage media ownership diversity and limit concentration of media control. Since the elevation of a LPTV licensed to Class A status must be a permanent change in order for that conversion to provide the certainty needed by the investment community, once a station becomes a Class A facility it should be held to retain that classification no matter who it is subsequently transferred to or what other new media the licensee acquires. If the Commission sees fit to apply the duopoly rule or other cross ownership limits of the Part 73 television service to Class A LPTV stations, such limits should be applied **perceptively**.

20. NPRM paragraph 23. TV translators comprise the largest group of television licensees. LPTV stations comprise the fastest growing group of television licensees. And Class A LPTV stations will be the most dynamic, smartest, most public service oriented, most FCC rule conscious, and most economically valued group of television licensees. (Or at least we would like to be all those things.) HDTV without LPTV would be a failure because over half of the primary television licensees - the Class A service - would not be participating in the transition, de-motivating their millions of viewers from rushing out to buy a new HDTV television set on which to watch their favorite LPTV programming. To the extent that the Commission still has not adopted rules for the conversion of LPTV to digital and HDTV, the Commission has set back the date at which enough homes have HDTV sets that the analog television service can be terminated. Conversely, the more motivation the Commission provides for LPTV operators to build digital stations, the sooner the required level of HDTV set penetration will be met. Consistent with the creation of the Class A LPTV service, by the conversion of LPTV stations from mere secondary to primary status, LPTV stations should have the option of applying for a digital simulcast channel, just like the other television licensees in Part 73. The Commission's inexplicable delay in dealing with DTV conversion plans for the LPTV industry has, however, created an equitable dilemma regarding the treatment of other Part 73 licensees that received construction permits after April 3, 1997. TPTV respectfully suggests that one solution to this dilemma would be to allow only Class A LPTV permittees that received their construction permit before April 4, 1997 to apply a separate DTV channel. Permittees authorized after April 3, 1997, whether they be Class A or "Class C" (i.e., full power) authorization holders, should be allowed to convert on channel at any time up until the end of the conversion period. These "on channel" authorization holders should, however, be given a future "maximization" window in which upgrade their DTV power to the maximum authorized for their Class.

21. Historically the Commission has always treated applicants as having only limited rights, but given construction permit holders and licensees identical rights and protections. In the case of Class A LPTV stations there is no overriding justification or need to vary from this tested practice. Numerous fully constructed LPTV stations operate and provide valuable programming service in construction permit status, because it has been several years since the last major modification window in which they could conform their construction permits to the configuration (e.g. tower location) they were forced to construct in. Absent a conforming construction permit, these LPTV operators have not had an opportunity to apply for a license to cover their constructed facilities. As they bore no responsibility for the cessation of major modification windows or for the practical problems that forced them to build significantly at variance with their constructions permits, it would be manifestly unfair to deny these LPTV operators a chance to apply for a DTV simulcast channel, while allowing licensees to apply.

22. NPRM paragraph 24: The underlying premise of the CBPA was to immediately stop the unnecessary destruction of community broadcasters by the implementation of

DTV without regard to the LPTV service. LPTV licensees are disproportionately clustered in channels 52-69, because those channels were the least used channels when LPTV was authorized in 1982. Thus to not protect non-core licensees would be to largely defeat the exact purpose of the CBPA. Non core licensees that gave notice of eligibility for class A status should be protected on their current channel, at their authorized Grade B contour until the end of the DTV transition period. Once each stations displacement permit is constructed and licensed, the B contour of the displacement channel should be protected. If the displacement channel is outside of the core this contour protection should last only until the DTV conversion period. Lastly, at the end of the DTV conversion period this contour protection should be available only to LPTV licensees that have converted to digital modulation and extend only to their digital protected contour.

Respectfully submitted,

TV-61 San Diego, Inc.
Call sign--K61GH
Permit File No. BPTTL-870629NO

Maxwell Agha,
Chairman, Chief Executive Officer

TV-61 San Diego, Inc.
1927 5th Avenue, Suite 100E
San Diego, CA 92101

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